laws that already deny foreign tax credits for taxes paid to North Korea and Syria. American companies that continue to do business in Russia should not receive U.S. tax benefits that offset taxes paid to Putin's regime.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

NOMINATION OF KETANJI BROWN JACKSON

Mr. KAINE. Mr. President, I proudly rise to speak about the nomination of Judge Ketanji Brown Jackson to be an Associate Justice of the U.S. Supreme Court.

When I began law school in the fall of 1979, the only woman Justice at the Supreme Court was a white marble statue on the steps. There were no women members of the Court. There had never been women members of the Court.

The motto engraved over the Court's entrance, ''Equal Justice Under Law,'' sounded great, but it also rang hollow for the more than half of the U.S. population that had never seen themselves represented on the U.S. Supreme Court.

And it was more than just the absence of women on the Court. In 1868, the 14th Amendment to the Constitution was adopted in core memorable phrase guaranteeing to all persons the equal protection of the law. But the Court, for more than 100 years, refused to extend equal protection to women.

In one of the first cases testing the meaning of the phrase ''equal protection of the law to all persons,'' the Supreme Court considered an Illinois State law restricting the practice of law to men only. A dynamic, young, feminist activist, Myra Bradwell, passed the Illinois bar exam and applied for a law license to practice law in Illinois. She was turned down because she was a woman. She appealed her case to the Illinois Supreme Court, and they turned her down because she was a woman. And then she came to the U.S. Supreme Court and said: We have just changed the Constitution to guarantee equal protection of the law to all persons, surely, you cannot turn me down in my quest to practice law after I have passed the Illinois bar exam.

The Supreme Court of the United States, in 1873, by a vote of 8 to 1, ruled that she was not entitled to an equal right to practice the profession of her choosing.

Let me read you a key part of the decision in that case:

> The paramount destiny and mission of women are to fulfill the noble and benign office of wife and mother. This is the law of the Creator.

So a wife and mother can't be a lawyer? So every woman must be a wife and mother? That is what the Supreme Court determined in analyzing the simple phrase ''all persons are entitled to equal protection of the law.''

Here is a great trivia question: When did the Supreme Court finally decide that equal protection of the law applied to women? 1971. It took 103 years after the 14th Amendment was adopted for the Supreme Court to say: Wait a minute, equal protection of the law to all persons, that means women.

In the case of Reed v. Reed, the Court ruled that a State statute providing that males must be preferred to females in the administration of estates—it was an estate administration case—the Court ruled, wait a minute, that violates women's rights to equal protection. Who was the lawyer in that case? A dynamic, young civil rights lawyer with the ACLU named Ruth Bader Ginsburg.

So within my career as a civil rights attorney, from when I started law school in 1979 to today—43 years later—I have seen great change in the law's treatment of women and in their representation on the U.S. Supreme Court.

The nomination of Judge Ketanji Brown Jackson will make history. She will be the first African-American woman on the Court. And she will move a Court that had never had a woman member when I started law school to a Court where four of the nine members are women.

What powerful evidence of the capacity we have as a nation to come closer and closer to the equality ideal that was articulated as our moral North Star in the opening phrase of the Declaration of Independence drafted by a Virginian in 1776.

So I celebrate the history-making nature of this appointment, but it is not the reason for my support.

I support Judge Jackson's nomination because of her stellar academic credentials, her prestigious judicial clerkships, her dedicated service as an attorney and member of the U.S. Sentencing Commission, her well-respected tenure as a Federal trial and appellate judge, and the multiple attestations that she has received attributing to her fairness and to her character.

In particular—in particular—I think that her successful confirmation as a Justice will add two critical skill sets to this nine-member collegial body: first, that she is a public defender; and, second, that she has been a trial judge.

That she was a public defender—so much of the Court's docket deals with issues that are at the heart of the American criminal justice system. There are currently members of the Court—Justice Sotomayor, Justice Alito—who had experience as prosecutors in both the State and Federal courts before they began their service in the judicial branch. That experience as prosecutor is really important experience, and it is an important expertise to have on the Supreme Court.

But a Justice Ketanji Brown Jackson will be the first public defender ever to sit on the Court. And for a Court of nine to share perspectives and grapple with resolution of questions involving the criminal justice system, for that Court only to have people who prosecuted cases and not have people who have defended, in particular, the most indigent criminal defendants—it is a Court that doesn't have the balanced 360-degree perspective that we would want in these important matters. So the fact that she served honorably as a Federal public defender, in my view, is a strong trait for her, but it is even a better trait if you think about what we would need in a nine-member Supreme Court.

Second, she has been a trial judge, a Federal district court judge in the district court for the District of Columbia. And that is really, really important. There is only one other member of the Court now who was a trial judge, and that is Justice Sotomayor. Some of the members of the Court, as far as I know—I can find no evidence—not only were they not trial judges, some of them I am not sure ever tried cases.

What does it mean to have a trial judge on the Court? Well, again, think about the docket of the Supreme Court. So much of the docket of the Supreme Court is ruling on questions and controversies, whose ultimate goal is to make the Nation's trials—civil and criminal trials—more fair: admissibility of evidence, sentencing standards, definitions of police misconduct that could either gain or shed sovereignty immunity in a trial going on in a trial court, how to impanel jurors, how to instruct jurors, when to strike a juror if there is evidence that the juror may have a bias or prejudice. These are all cases that come before the Supreme Court all the time. And these kinds of cases, it is particularly important to have a Court that is well-represented by people who have actually been in the courtroom and done it.

What trial judges have to do is they have to figure out how to instruct and impanel jurors and deal with the juror who may have a bias question. They have to rule on evidentiary objections in a split second; dispose of discovery disputes; rule on dispositive motions like motions to dismiss or summary judgment motions; in bench trials, actually render judgments, which usually involves credibility determinations among competing witnesses.

The judges in the Federal system are those with the power of sentencing, the most difficult power of all. If you have not been a trial lawyer or a trial judge, you might underestimate how difficult and challenging each of those tasks are. But if you have had the experience of being a trial lawyer or trial judge, you understand how important they are.

I asked Judge Jackson as I interviewed her, tell me how you think that being a trial judge might help you on the Court. She said, so much of our opinions are essentially instructions to State and Federal trial courts, here is how to conduct a fair trial. I think my experience will enable me to write opinions that are more workable; that are more understandable; that are more practical; that are more likely to lead to a result that is fair to the parties, but also one that will increase the

respect for the decision making in courts themselves.

When I was Governor of Virginia, I did not have the power to put judges on the bench, except in rare instances. In the Virginia State system, I wouldn't even nominate judges. The legislature would choose the judges, and the Governor had no role, except—except—when the legislature would deadlock. If the house and senate couldn't agree on filling a position, then the Governor got to put in a judge or a justice until the legislature came back next year, and then they would have to vote on whether to ratify what the Governor had done.

Three times, when I was Governor, my two Republican houses deadlocked on an appellate judge: one on the court of appeals and two on the Virginia Supreme Court. So I had this opportunity. As somebody who practiced civil rights law for 17 years, as somebody who was married to a juvenile court judge, I had the opportunity to consider and then nominate people to be appellate judges.

I decided pretty quickly, as I analyzed who should be appellate judges—and I followed this rule in all three of my opportunities—that I would appoint a great trial judge. In each of the three instances, I appointed a great trial judge because I knew that that great trial judge would be able to sit on an appellate court and render rulings that weren't sort of philosopher, king-or-queen rulings that might sound good in a law review article or in a panel discussion, but they could render rulings that would be instantaneously understood in courtrooms all across the Commonwealth and be able to be implemented by the other trial judges, who were doing their best every day to conduct fair trials.

So that is why I think the second factor that Judge Brown Jackson was a district court judge handling trials, multiple trials and motions every day, will put her in such good company as she joins Justice Sotomayor as the only other member with that experience.

I will conclude and just say a Justice Ketanji Brown Jackson will add depth and perspective to a Court that needs it. As we near the 150th anniversary of Myra Bradwell's quixotic case, the confirmation of Justice Ketanji Brown Jackson will make the statue of justice and the engraved phrase ''Equal Justice Under Law'' more accurate reflections of our Nation's highest Court.

With that, Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

Mr. THUNE. Mr. President, I ask unanimous consent that the following Senators be permitted to speak prior to the scheduled vote: myself for up to 15 minutes, Senator CRUZ for up to 25 minutes, and Senator STABENOW for up to 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TITLE 42 AND THE BORDER

Mr. THUNE. Mr. President, we are moving from disaster to catastrophe at our southern border. Last week, the Biden administration announced that title 42 COVID–19 restrictions, which had provided for the immediate deportation of those who crossed the border illegally, will end in May.

Now, it is ironic that just as the administration presses for more COVID funding, it is apparently declaring COVID is over at the border. Now, I just want everybody to think about the inherent contradiction in what is being said here. By ending title 42, the administration says, for all intents and purposes, the pandemic is over; it is over at the border. But, today, it was announced that the student loan program—repayments on student loans—would be extended until the month of August. Why? Presumably because of the pandemic.

There is still a policy in place, Mr. President, if you can believe this—yesterday, I had the chance to question, at the Senate Finance Committee, Secretary Becerra of the Health and Human Services Department about a policy that is in place right now that has not yet been repealed that requires children under 5 in Head Start facilities to wear masks—masks not just when they are in the classroom but when they are outside on the playground—children under 5, to wear masks.

Now, who says that is a bad idea? Well, for one, the World Health Organization. The World Health Organization isn't exactly a conservative-leaning institution. The World Health Organization says that it is not necessary for children under 5 to wear a mask because there is no discernible health or safety benefit derived from that.

So that policy is still in place. Kids under the age of 5 at Head Start facilities still have to wear masks, not just inside but when they are outside.

Now student loans, again, have been deferred. You don't have to repay your student loans at least until August. It has been extended again.

These policies reflect a belief on behalf of the administration that we are evidently still in a pandemic that requires these policies to stay in place.

So the student loan deferral request has been made or is going to happen. They are just going to do it. So they are doing that by fiat. And this rule that requires children under 5 to wear masks suggests we are still very concerned about the pandemic and about the spread of COVID–19. Yet, Mr. President, title 42 is going to be lifted at the border, which is a pandemic measure. It was put in place as a result of the pandemic and has enabled our officials at the border, Customs and Border Protection, to be able to at least somewhat manage the flow of illegals coming across the border. Think about that. Think about the inherent contradiction, the messages that you are sending—in addition, I would add, to the $10 billion, which was originally $15 billion, that is being requested by the administration to deal with COVID.

So you are asking for more funding. You are requiring kids to wear masks. You are extending the deferral on student loan repayments. Yet you are lifting title 42 restrictions.

Let me tell you what that means. Once title 42 restrictions are officially lifted, the flood of illegal immigration across our southern border is expected to become a tsunami. The Department of Homeland Security expects as many as 18,000 per day to attempt to cross our southern border after the policy is lifted—18,000 per day. That adds up to more than half a million migrants per month.

To put those numbers in perspective, in fiscal year 2021, Border Patrol encountered more than 1.7 million individuals attempting to cross our southern border. That was the highest number ever recorded in a single year. Now we are talking about a rate of migration that would lead to our hitting that 1-year record in just over 3 months.

Title 42 restrictions were never intended to be a permanent border solution, and lifting them would not be a problem if the President had some meaningful plan in place for dealing with the border crisis that has been going on since he took office, but he doesn't—again, evidenced by the fact that the President has no interest in visiting the border, nor has his border czar, the Vice President of the United States. Neither has been to the border.

Lifting title 42 without a plan to curb illegal immigration is nothing more than an invitation for our current crisis to get exponentially worse, which is exactly, exactly what the Department of Homeland Security expects is going to happen.

Now, you don't have to take my word for it on these problems with the administration's decision. Here is what one Democratic Senator had to say about the administration's title 42 decision:

> This is a wrong decision. It's unacceptable to end Title 42 without a plan and coordination in place to ensure a secure, orderly, and humane process at the border.
>
> This is a wrong decision. It's unacceptable to end Title 42 without a plan and coordination in place to ensure a secure, orderly, and humane process at the border.

That is from a Democratic Senator.

Another Democratic Senator noted:

> I think this is not the right time and we have not seen a detailed plan from the administration. We need assurances that we have security at the border and that we protect communities on this side of the border.

Another Democratic Senator.

This is another Democratic Senator, a third one:

> Today's announcement by the CDC and the Biden Administration is a frightening decision. Title 42 has been an essential tool in combatting the spread of COVID–19 and controlling the influx of migrants at our southern border. We are already facing an unprecedented increase in migrants this year, and that will only get worse if the Administration ends the Title 42 policy. We are nowhere near prepared to deal with that influx.